

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

FRANK EDWIN PATE, #30430-048 §
VS. § CIVIL ACTION NO. 4:18cv839
UNITED STATES OF AMERICA § CRIMINAL NO. 4:14CR00125-001

ORDER OF DISMISSAL

Petitioner Frank Edwin Pate, a prisoner confined at F.P.C. Montgomery, filed the above-styled and numbered lawsuit. The petition was referred to United States Magistrate Judge Christine A. Nowak, who issued a Report and Recommendation (Dkt #25) concluding that Pate's motion to dismiss (Dkt. #24) should be granted. Pate has filed objections (Dkt. #27).

Pate initiated the proceedings by filing a petition for a writ of habeas corpus in the United States District Court for the Middle District of Alabama on September 27, 2018. The petition was construed as a motion to vacate, set aside or correct Pate's sentence pursuant to 28 U.S.C. § 2255 and transferred to this Court on November 30, 2018. On December 3, 2018, the Court issued an order instructing Pate to submit his claims on the standardized § 2255 form. On December 10, 2018, Pate filed the motion to dismiss. The Magistrate Judge accordingly entered a Report and Recommendation to grant the motion. In his objections, Pate presents specious arguments as to the proper method of granting his motion to dismiss.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Pate to the Report, the Court is of the opinion that

the findings and conclusions of the Magistrate Judge are correct and Pate's objections are without merit. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the motion to dismiss (Dkt. #24) is **GRANTED** and Pate's motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 is **DISMISSED** without prejudice. All other motions not previously ruled on are hereby **DENIED**.

SIGNED this 12th day of January, 2019.



AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE